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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b)

Table of Allotments,

TV Broadcast Stations,

(Campbellsville and Bardstown, Kentucky)

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)
)
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)

MM Docket No. 01-148

RM-10141

To: Chief, Allocations Branch

COMMENTS OF
INDEPENDENCE TELEVISION COMPANY

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Summary

Independence Television Company (“Independence”) respectfully requests that the Commission deny the Petition for Rule Making (the “Petition”) filed by Louisville Communications, LLC, to change the community of license for WBKI-TV (the “Station”) from Campbellsville, Kentucky, to Bardstown, Kentucky. As demonstrated herein, the proposed community change would disserve the public interest and is contrary to long-standing Commission precedent and policy.

The Petition proposes nothing short of removing the sole local television transmission service from the City of Campbellsville. Removing Campbellsville’s sole local service would contravene both the Commission’s Congressional mandate and long-standing Commission policy, without producing any real public interest benefits. These legal doctrines are not empty theories; they reflect explicit Congressional judgment that communities large and small benefit from the licensees of the nation’s airwaves. In this case, nearly 10,500 people call Campbellsville “home.” The city has a rich history as well as vibrant cultural and commercial enterprises. In short, Campbellsville does not deserve to be abandoned by the same Commission licensee who promised to provide the town with exceptional service when it sought Commission consent to acquire WBKI-TV less than two years ago.

Quite aware of the decades old Congressional and Commission policies preventing it from removing WBKI-TV from Campbellsville, the Station’s licensee argues in the Petition for a new and novel waiver to these policies. Specifically, the Petition asserts that a Class A eligible low power television station licensed to Campbellsville – W04BP – should be deemed a local television transmission service for purposes of the Commission’s allocation priorities and policies. This argument is specious in theory and in fact. A low power television station, even with Class A status, simply cannot replicate the level or extent of service provided by full-power

television stations. Indeed, for these reasons such stations lack many of the rights and responsibilities bestowed upon full-power stations. An exception in this case surely would encourage other rural television station owners across the station to seek to “move in” to larger metropolitan areas, thereby directly undercutting the very policies designed to ensure the fair, efficient, and equitable distribution of television licenses.

Moreover, even if the Commission is inclined to grant such an unprecedented waiver, the facts in this case do not justify a waiver in favor of WBKI-TV. The low power station in Campbellsville, W04BP, is owned by and presumably operated for the Campbellsville University community rather than the community at large. W04BP operates intermittently, and when it does, it broadcasts with such minimal power that its off-air audience is likely meager at best. It does not appear that Campbellsville, the university, or other local third-parties even acknowledge the existence of W04BP. And it is doubtful that W04BP will be licensed as a Class A station. It is simply impossible on these facts to characterize W04BP as a local television voice comparable to that of a full-power, full-service television station.

It is clear that Campbellsville deserves more than minimal off-air service from an on-again, off-again low power television station. Indeed, Campbellsville deserves nothing less than the level of full-power television service promised to it by the Commission and WBKI-TV’s licensee. The Commission, therefore, should deny the Petition.

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To: Chief, Allocations Branch

**COMMENTS OF
INDEPENDENCE TELEVISION COMPANY**

Independence Television Company (“Independence”), licensee of Television Stations WDRB-TV, Louisville, Kentucky, and WFTE(TV), Salem, Indiana, by its attorneys and pursuant to Section 1.420 of the Commission’s Rules, hereby respectfully submits these Comments on the *Notice of Proposed Rule Making* in MM Docket No. 01-148 (the “Notice”).¹ The Notice seeks comment on the Petition for Rule Making (the “Petition”) filed by Louisville Communications, LLC, to change the community of license for WBKI-TV (the “Station”) from Campbellsville, Kentucky, to Bardstown, Kentucky.

The Petition proposes to remove Campbellsville’s sole local television service in contravention of long-standing Congressional and Commission policies. If any public interest arguments ever could be assembled justifying a waiver of these policies based on Class A LPTV service to a community, there are no facts supporting such a waiver in the instant case. Accordingly, Independence respectfully requests that the Commission deny the Petition.

¹ The *Notice of Proposed Rule Making (Campbellsville and Bardstown, Kentucky)*, DA 01-1594 (rel. July 6, 2001), established August 27, 2001, as the Comment filing deadline. Accordingly, these Comments are timely filed.

Introduction

The City of Campbellsville is located in the heart of central Kentucky and is home to almost 10,500 residents. The City and surrounding county are also home to a mix of agriculture, manufacturing, and recreation, as well as the site of the Civil War battle of Tebbs Bend.² Tobacco, corn, soybeans, cattle and hogs are among the area's principal products.³ The City has its own government headed by a mayor, city clerk, and other officials, and it maintains a police force of 23 officers and a fire and rescue department with 23 full-time rescue personnel. It also has its own public and private schools.⁴

By any measure, Campbellsville qualifies as a community for allotment purposes. To ensure that the needs and interests of the residents of the City and surrounding areas are well-served, the Commission has allocated analog Channel 34 and digital Channel 19 television service to Campbellsville. It is not clear, however, that the Commission licensee operating the full-power television station licensed to Campbellsville, WBKI-TV, is very interested in serving Campbellsville any longer. Just last year, the licensee relocated WBKI-TV's transmission facilities to a site located 26 miles closer to Louisville.⁵ While the Station continues to place a city grade signal over Campbellsville from the new site, it now also places a city grade signal over Louisville. This has allowed WBKI-TV to open its main studio in Louisville, which is located more than two hours away from Campbellsville by car.⁶

² See Internet website of campbellsville.com, www.campbellsville.com, relevant pages of which are attached hereto at Exhibit A.

³ *Id.*

⁴ *Id.*; Internet website of Campbellsville Tourism Commission, www.campbellsvilleky.com, relevant pages of which are attached hereto at Exhibit B.

⁵ Compare FCC File No. BLCT-19830418KF with FCC File No. BLCT-20001109ABF. Direct geographic distance data derived from <www.indo.com/cgi-bin/dist?>.

⁶ Driving distance data derived from <www.mapquest.com>.

Moreover, it is not apparent that the Station is providing any service to Campbellsville today other than its delivery of a city grade signal. During a recent inspection of the Station's issues and programs list, a long-time Independence employee failed to uncover any evidence that WBKI-TV's licensee regularly ascertains the issues that are important to Campbellsville residents or that it broadcasts programming in response thereto.⁷ A review of the local community's Internet website ("campbellsville.com") and that of the local University indicate that neither organization considers WBKI-TV to be a local outlet, for neither entity identifies WBKI-TV in its list of local media organizations.⁸

The Station's licensee has now asked the Commission to remove Campbellsville's sole local television service. Its Petition proposes to specify a new community, Bardstown, which is half as far from Louisville (32 miles) as Campbellsville (64 miles).⁹ While it has not yet proposed to move the Station's transmitter site to a location even closer to Louisville than its current site, a grant of the Petition may enable WBKI-TV to complete its transition from a rural television station to a urban television station.

As explained herein, Congress and the Commission have established policies to ensure that television licensees serve their local communities and that television licenses are allocated fairly and equitably. WBKI-TV's current attempt to abandon Campbellsville violates these fundamental policies and should be rejected.

⁷ See generally Declaration of Wilson Hatcher, attached hereto at Exhibit C.

⁸ See Internet website of campbellsville.com, www.campbellsville.com, relevant pages of which are attached hereto at Exhibit A; see Internet website of Campbellsville University, www.campbellsvil.edu, relevant pages of which are attached hereto at Exhibit D.

⁹ Distance data derived from <www.indo.com/cgi-bin/dist?>.

I. Consistent with its Congressional Mandate, the Commission Does Not Permit Licensees to Abandon Their Communities of License Absent Truly Compelling Circumstances That Are Not Present Here.

Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”¹⁰ The Commission consistently has interpreted this provision to require the allocation of television stations to local areas rather than to regional or nationwide areas. Intertwined with this “local” allocation scheme is the Commission’s expectation that broadcasters, in fulfilling their obligation to operate in the public interest, will serve the needs and interests of their local service areas. Thus, the Commission concluded long ago that the Communications Act requires “the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service.”¹¹

This focus on localism and local service constitutes the very core of the broadcast service and distinguishes free over-the-air broadcasting from other communication services regulated by the Commission. By ensuring a localized rather than regionalized or national broadcast service, the FCC has afforded consumers the ability to receive programming directed toward individual local needs and interests. As a result, local businesses and politicians can communicate with local audiences, who in turn benefit from the dissemination of programming tailored to their local needs and interests, including coverage of timely local news events, political debates, weather, advertisements, and emergency information, including local EAS warnings.

¹⁰ 47 U.S.C. § 307(b).

¹¹ *Report and Statement of Policy re: Commission en banc Programming Inquiry*, 44 FCC 2303, 2316 (1960).

While mindful of the importance of local broadcast service, the Commission in 1989 concluded that it could relax its allocation rules to permit a licensee to modify its station's authorization to specify a new community of license without being subject to competing expressions of interest.¹² In doing so, the Commission nevertheless made clear that it "will not allow any broadcaster to take advantage of this new procedure if the effect would be to deprive a community of an existing service representing its only local transmission service."¹³ On reconsideration, the Commission explained that its prohibition on the removal of a community's sole local broadcast service furthers the statutory mandate of Section 307(b) of the Communications Act because such removal "could result in diminishment rather than enhancement of local service."¹⁴

Accordingly, the Commission concluded that only in "rare circumstances" would it waive its prohibition against removal of sole local service.¹⁵ Thus, while removal might be justified to provide a first reception service to a significantly sized population, "the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver."¹⁶

¹² *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) ("Community of License R&O"), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Community of License MO&O"); see also 47 C.F.R. § 1.420(i).

¹³ *Community of License R&O* at ¶ 28.

¹⁴ *Community of License MO&O* at ¶ 16.

¹⁵ *Id.* at ¶ 17.

¹⁶ *Id.* at ¶ 18. It is also worth noting that the Commission in 1995 refused to waive its prohibition against removal of sole local service and its freeze on amendments to certain television allotments where the community change proposal would have provided a second local commercial television transmission service to a much larger community, would have provided reception service to more than twice as many people, and would have ensured that a dark station resumed operations. See *Appleton, New London and Suring, Wisconsin*, 10 FCC Rcd 7712 (1995). If the facts in *Appleton* were insufficient to justify a waiver, then Petitioner's meager waiver request surely cannot be granted.

In the twelve years since the release of *Community of License R&O*, the Commission has found “rare circumstances” sufficient to justify a waiver in just two cases.¹⁷ Those two cases posed truly unique circumstances:

- In *Los Angeles and Norwalk, California*, the change involved a licensed community previously deemed by the Commission to be legally indistinguishable from the proposed community;¹⁸ and
- In *Ardmore, Oklahoma and Sherman, Texas*, the change reflected the fact that the station had maintained a main studio in the proposed community for over twenty years; the licensee pledged to continue operating a studio in the licensed community; and spacing constraints precluded the licensee from relocating the transmitter site in such a way that would deprive the licensed community of a city grade signal from the station.¹⁹

Such exceptional circumstances do not exist here. First, allocating WBKI-TV’s Channel to Bardstown would not provide first local service to a significantly larger community. In fact, Bardstown’s 2000 Census population (10,374) is slightly less than that of Campbellsville (10,498).²⁰ Second, the Petition provides no basis whatsoever for concluding that Campbellsville is legally indistinguishable from Bardstown in the same manner that Norwalk is legally indistinguishable from Los Angeles. Third, the Petition provides no indication that

¹⁷ The Commission has concluded that its policy is not implicated when an unbuilt station proposed to change its community and a new allotment could be made to the licensed community. See *Lake Havasu City, Arizona and Laughlin, Nevada*, 15 FCC Rcd 11664 (2000); *Farmington and Gallup, New Mexico*, 11 FCC Rcd 2357 (1996), *pet. for recon. denied*, 14 FCC Rcd 18983 (1999). Likewise, the prohibition does not apply to a community change proposal that includes adding a new allotment to the licensed community where the petitioner pledges to operate a station on the new allotment. See *Albion, Lincoln, and Columbus, Nebraska*, 8 FCC Rcd 2876 (1993), *pet. for recon. denied*, 10 FCC Rcd 11931 (1995).

¹⁸ 6 FCC Rcd 5317 (1991).

¹⁹ 7 FCC Rcd 4846 (1992).

²⁰ 2000 U.S. Census, relevant material attached hereto at Exhibit E.

WBKI-TV's licensee has provided a local presence to Bardstown for the past twenty years, or that the licensee would continue to maintain a local presence in Campbellsville.²¹

Finally, there is no basis to believe that the Petitioner would not seize upon a grant of the Petition to move WBKI-TV's transmitter closer to Louisville and thereby withdraw city grade service from Campbellsville altogether. The Petitioner recently relocated the Station's transmission facilities to a site located 26 miles closer to Louisville than its prior transmission site,²² and it apparently recently opened a main studio in Louisville.²³ As such, it appears that the Petitioner intends to abandon Campbellsville completely in favor of becoming a Louisville station should the Commission grant the Petition.

Both Congress and the Commission have expressed the need for a fair and equitable allocation of television licenses to communities of all sizes. And the Commission has spoken very clearly on this point: quite simply, it "will not allow any broadcaster to take advantage of [Section 1.420(i)] if the effect would be to deprive a community of an existing service representing its only local transmission service."²⁴ The Petition proposes exactly this – the deprivation of existing service to Campbellsville without sufficient public interest (as opposed to private) benefits. In short, Section 307(b) of the Communications Act and the Commission's case law thereunder require the denial of the Petition.

²¹ As noted below, WBKI-TV's licensee apparently has no local presence in Campbellsville today, despite being licensed to serve that community.

²² Compare FCC File No. BLCT-19830418KF with FCC File No. BLCT-20001109ABF. Direct geographic distance data derived from <www.indo.com/cgi-bin/dist?>.

²³ See generally Declaration of Wilson Hatcher (indicating a main studio address for WBKI-TV in Louisville), attached hereto at Exhibit C.

²⁴ *Community of License R&O* at ¶ 28.

II. The Existence of a Class A Eligible Low Power Television Station Does Not Justify a Waiver of the Prohibition on Removing a Community's Sole Local Service.

Perhaps realizing that the Commission takes its Congressional mandate seriously, the Petitioner here seeks a waiver of the Commission's policy. According to the Petitioner, now that Congress has created primary status for certain low power television stations,²⁵ the Commission should deem LPTV stations eligible for such "Class A" status to be an "existing service" for purposes of evaluating a community of license change proposal.²⁶ This argument is specious and should be dismissed.

The Commission has concluded that Section 307(b) permits only "rare circumstances" to justify a waiver of its prohibition. As demonstrated above, case law confirms that the Commission takes its obligation seriously. Adopting the Petitioner's interpretation, however, would make a mockery of those efforts. More than 950 LPTV stations are eligible for Class A status.²⁷ If Class A eligible stations were deemed equivalent to full-power stations for community change purposes, it is therefore likely that hundreds of rural communities across the country instantly would be faced with the risk of losing the sole television transmission service. Such a result would turn the Commission's "rare circumstances" standard on its head.

Moreover, as a practical matter, Class A television service is no substitute for full-power television service. The Commission recently explained that because LPTV stations "operate at reduced power levels [footnote omitted], [they] serve a much smaller geographic region than

²⁵ See *Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000) ("Class A R&O"), on recon., 23 C.R. 893 (2001) ("Class A MO&O").

²⁶ See Petition at 5-6.

²⁷ *Certificates of Eligibility for Class A Television Status*, DA 00-1224 (rel. June 2, 2000).

full-service stations.”²⁸ In the accompanying footnote, the Commission further explained as follows:

LPTV stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (*i.e.*, channels 2 through 13), and 150 kilowatts of power for stations operating on the UHF band (*i.e.*, channels 14 through 69). By comparison, full-service stations on VHF channels 2-6 and 7-13 radiate up to 100 kilowatts and 316 kilowatts of power, respectively, and stations on the UHF channels radiate up to 5,000 kilowatts of power. LPTV signals typically extend to a range of approximately 15 to 20 miles, while the signals of full-service stations can reach as far as 60 to 80 miles away.²⁹

As such, even a licensed Class A eligible LPTV station cannot hope to replicate the type, extent, or manner of service provided by full-power television stations.

Class A television stations also do not enjoy the same rights and responsibilities as full-power stations. In addition to severe power limits, Class A stations do not have mandatory carriage rights on cable or satellite systems.³⁰ Class A stations also are subject to displacement by certain full-power analog and digital television stations.³¹ And Class A stations enjoy far less flexibility in locating their main studios.³²

Consequently, as a matter of law and fact, the Petitioner is simply incorrect to assert that Class A eligible low power television stations can or should serve as an “existing service” for purposes of the Commission’s allotment policies. The Commission accordingly should decline

²⁸ *Class A MO&O* at ¶ 2.

²⁹ *Id.* at n. 6.

³⁰ *Id.* at ¶¶ 39-42.

³¹ *Id.* at ¶ 54 (Class A stations must protect certain proposed but not authorized full-power analog stations); *id.* at ¶¶ 61, 63 (Class A stations must protect proposals to maximize full-power digital facilities and must accommodate certain facility modifications of full-power digital stations).

³² *Id.* at ¶ 30.

the Petitioner's invitation to dispense with the "rare circumstances" waiver standard.

Independence submits that both Section 307(b) and common sense dictate this result.

III. Even if a Waiver Based on Class A Service Could be Justified in Theory, Such a Waiver Should Not Be Applied In This Case.

If the Commission concludes that licensed Class A stations should be deemed equivalent to full-power stations for allotment purposes, the Commission should not apply such a standard in this case. The Campbellsville Class A eligible station, W04BP, does not provide a level of service comparable to that which is required to be provided to Campbellsville by WBKI-TV or could be provided by a typical low power television station. Indeed, it is highly unlikely that Campbellsville residents could even receive consistently a high-quality off-air signal from W04BP.

As noted, the Commission restricts low power television stations to significantly lower power levels than those available to full-power television stations. In particular, VHF LPTV stations may be authorized with an effective radiated power of up to 3 kilowatts. In contrast, W04BP is licensed with just 0.07 kilowatts. This represents just 2.3 percent of the maximum power level for VHF LPTV stations, and a mere 0.07 percent of the maximum power level for VHF full-power stations.

The negligible power level authorized to W04BP obviously prevents this LPTV station from obtaining the 15 to 20 mile signal reach typical of other LPTV stations. The exceedingly small service area, however, may be sufficient for W04BP to serve the Campbellsville University community of 1,600 students.³³ Because Campbellsville University is the licensee of W04BP, the LPTV station does not appear to be operated by or for the residents of

³³ See Internet website of Campbellsville University, www.campbellsvil.edu, relevant pages of which are attached hereto at Exhibit D.

Campbellsville and surrounding areas. As such, it is highly unlikely that W04BP ascertains or could ascertain the needs and interest of the larger Campbellsville community or that W04BP could provide programming in response thereto.

For these reasons, Independence submits that W04BP has not served and cannot serve as a local outlet for Campbellsville in the same manner as a local television station. Research supports this assertion. There are *no* entries for or references to W04BP on the community Internet website “campbellsville.com” – not even on the page listing local news and media.³⁴ Significantly, the Internet website of Campbellsville University includes a page listing local media outlets, yet W04BP is nowhere mentioned on that page.³⁵ Indeed, none of the University’s website pages nor the on-line editions of the University’s *Campus Times* contain any reference whatsoever to W04BP. The fact that not even W04BP’s licensee considers the LPTV station to be a local media fatally undercuts the Petitioner’s arguments to the contrary.

Finally, it is not at all clear that the Commission will license W04BP as a Class A station. Although the LPTV station submitted a certification of eligibility that was approved by the Commission, its Class A license application indicates that the certification was in error.³⁶ According to that application, the licensee discontinued W04BP’s service at some point prior to enactment of the Community Broadcasters Protection Act of 1999 (“CBPA”), and that the LPTV station has resumed operations only “intermittently.”³⁷ Because Congress and the Commission explicitly restrict Class A eligibility to those LPTV stations broadcasting at least 18 hours per

³⁴ See Internet website of campbellsville.com, www.campbellsville.com, relevant pages of which are attached hereto at Exhibit A.

³⁵ *Id.*

³⁶ Application for Class A Television Broadcast Station Construction Permit or License for W04BP, FCC File No. BLTVA-20010712AHS, a copy of which is attached hereto at Exhibit F.

³⁷ See *id.* at Exhibit 2.

day during the 90-day period preceding the CBPA's enactment, W04BP does not appear to be eligible for Class A status.³⁸

Other deficiencies also render W04BP's Class A application ungrantable. The licensee failed to complete the Tech Box. It did not certify compliance with Section 73.6011 (analog station protection). It did not respond to the certification questions regarding Sections 73.6012, 73.6014, or 73.6020 (protection of LPTV stations, television translator stations, Class A stations, and land mobile operations). And it admitted that W04BP causes unlawful interference to the full-power operations of WAVE(TV), Channel 3, Louisville, Kentucky.

At this time, it is doubtful that the Commission will – or even can – license W04BP as a Class A station. Yet even if W04BP attains Class A status, its meager facilities and extremely limited role in the Campbellsville community ensure that W04BP will never offer a local service commensurate with what a full-power television station could provide. Consequently, if the Commission finds that licensed Class A television stations, in some circumstances, may serve as an “existing service” for allotment purposes, W04BP could not satisfy even the most basic qualifications for such treatment.

³⁸ *Class A MO&O* at ¶¶ 6, 33.

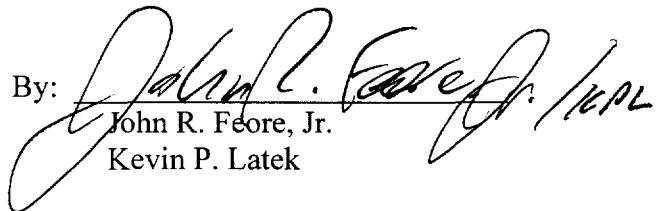
CONCLUSION

The City of Campbellsville deserves a full-power television station that is responsive to its needs and interests as required by Section 307(b) of the Communications Act. At this time, it does not appear that WBKI-TV's licensee is willing to provide the requisite level of service. Campbellsville University's W04BP, however, is ill-equipped to fill this void, as it does not and apparently cannot serve as an outlet for local expression. Indeed, even if this LPTV station could provide responsive programming to Campbellsville residents, W04BP broadcasts a signal that is hundreds of times less powerful than that of a full-power television station – that is, when the LPTV station is actually operating.

As demonstrated herein, the Petitioner has not even come close to satisfying the high burden for an unprecedented waiver of Congressional and Commission policies mandating the fair, equitable, and efficient allocation of television licensees. For these reasons, Independence respectfully requests that the Commission deny the Petition.

Respectfully submitted,

INDEPENDENCE TELEVISION
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August 27, 2001

EXHIBIT A

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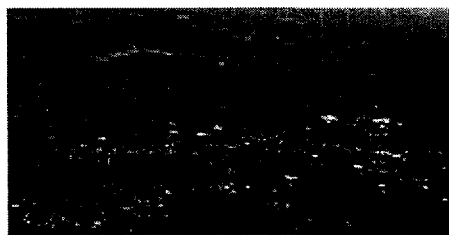
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